PHILLIP E. FLANAGAN

IBLA 81-671 Decided September 8, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas application. NM 42139.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest

> Where an applicant places the name of another party in interest on his simultaneous noncompetitive oil and gas lease application and files a separate statement indicating that there is an oral agreement between them under which he has 50 percent and the other party has 50 percent, it is reasonable to assume that the applicant refers to 50 percent of all of any interest acquired by him. This statement adequately states the nature of the oral agreement between the applicant and the other party in interest, and BLM's decision rejecting the application for failure to state the nature of the other party's interest will be vacated.
>
> Harry Reich, 27 IBLA 123 (1976), distinguished.

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE PARRETTE

On July 22, 1980, Phillip E. Flanagan filed a simultaneous noncompetitive oil and gas lease application for parcel NM 657 with the New Mexico State Office, Bureau of Land Management (BLM). This application was drawn with first priority by BLM in the August 1980 drawing.

Flanagan's application listed Samuel Stanbury as another party in interest in the application. The application was accompanied by a certificate, signed and dated by both Flanagan and Stanbury, that they were the sole parties in interest in the application, and noting as follows: "By oral agreement[:] Phillip E. Flanagan 50%[,] Samuel Stanbury 50%." The certificate also stated that they were U.S. citizens, over 21 years of age, and the owners of "not to exceed 246,080 chargeable acres of Federal oil and gas leases in the same state."

On October 7, 1980, BLM issued a decision requiring Flanagan to furnish additional information within 30 days on pain of rejection of his offer. 1/ Flanagan filed this information with BLM on October 16, 1980.

On March 30, 1981, BLM issued its decision rejecting Flanagan's "offer to lease," 2/ holding that his mere statement of the name of the other party in interest was not adequate, since BLM could not know if the cited percentages of interest were of record title or some other interest in the proposed lease, citing Harry Reich, 27 IBLA 123 (1976). Flanagan filed a timely notice of appeal of this decision.

[1] The pertinent requirements are set out in 43 CFR 3102.2-7 which provides as follows:

> (a) The applicant shall set forth in the lease offer, or lease application if leasing is in accordance with Subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.
>
> (b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title. [Emphasis added.]

1/ BLM apparently requested this information as part of its investigative clearance of oil and gas lease applications undertaken pursuant to Secretarial Order No. 3051 (Apr. 7, 1980).

2/ We note that BLM incorrectly referred to Flanagan's application as an "offer to lease." Under the amended regulations, the card now submitted is properly styled an "application." 43 CFR 3112.2-1. An "offer" is a different form which a successful applicant is required to complete following adjudication and approval of his "application." 43 CFR 3112.4-1.

Appellant complied with 43 CFR 3102.2-7(a) by placing Samuel Stanbury's name on the application as another party in interest. Appellant's and Stanbury's separate statement also sets forth their citizenship and compliance with acreage limitations.

The issue presented is whether the separate statement which appellant filed along with his application adequately sets forth the nature of the oral understanding between him and Stanbury as required by 43 CFR 3102.2-7(b). We conclude that it does and vacate BLM's decision. 3/

The present form of the regulation differs from that in effect when Harry Reich, supra, was issued. Under the old language of 43 CFR 3102.7 (1979), the statement had to set forth "the nature and extent of the interest" of each party in the offer. The new regulation requires only that "the nature of any oral understanding between them" be set out. We regard this change as a slight relaxation of the strictures of the disclosure requirement.

We hold that appellant's description of the division of interests between him and Stanbury may reasonably be regarded as referring to 50 percent of all of any interest acquired by appellant, in the absence of any language suggesting that either party's interest is limited or enhanced in any way. Appellant's description meets the minimum requirements of 43 CFR 3102.2-7(b).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to BLM.

Bernard V. Parrette
Chief Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

3/ In the final analysis, we find that we cannot disagree with appellant's argument in his statement of reasons, to the effect that "the forms filed by the appellant could not possibly be construed other than as an application for record title in himself with all beneficial rights to be owned equally by both declared parties in interest."